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FEDERAL COMMUNICATIONS COMMISSION
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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Service Rules for the 746-764 and 776-794
MHz Bands, and Revisions to Part 27 of the
Commission's Rules

WT Docket No. 99-168

Carriage of the Transmissions of Digital
Television Broadcast Stations

CS Docket No. 98-120

Review of the Commission's Rules and
Policies Affecting the Conversion to Digital
Television

MM Docket No. 00-~~83~~39

TO: The Commission

COMMENTS OF MIDWEST TELEVISION, INC.

Midwest Television, Inc. ("Midwest"), licensee of station KFMB-TV (NTSC Channel 8/DTV Channel 55) in San Diego, California, files these comments in response to the Commission's *Further Notice of Proposed Rulemaking* in the above-captioned matter ("*Further Notice*")¹ to urge the Commission to prohibit any band-clearing mechanisms that could result in any new interference to the analog or digital operations of full power television stations. Because the Commission made DTV channel allotments in Channels 60-69 only where no other reasonable, lower band allotments were available, band-clearing arrangements most often will occur in the most spectrum-congested regions of the country – regions where stations already

¹ *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, Carriage of the Transmissions of Digital Television Broadcast Stations, Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, FCC 00-224, WT Docket No. 99-168, CS Docket No. 98-120, MM Docket No. 00-83 (adopted June 22, 2000).

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have suffered the greatest interference losses as a result of the DTV transition. Viewers in these regions can least afford the additional service losses that could result from relocating stations from Channels 59-69 to channels lower in the television band.² Thus, to the extent that the Commission adopts or approves particular mechanisms for clearing stations out of the Channel 59-69 band, it should require that such mechanisms result in *no new interference* to any other full power television stations.

In the *Further Notice*, the Commission seeks comment on what steps it can take “to facilitate the band-clearing process.”³ One option explored by the Commission is “three-way clearing agreements that would provide for TV incumbents on television Channels 59-69 to relocate to lower band TV channels that, in turn, would be voluntarily cleared by the lower band TV incumbents.”⁴ The Commission stated that it generally contemplated “voluntary three-way agreements that would involve an incumbent in the Channel 59-69 band relocating to a ‘core’ channel between Channels 2 and 51, which is not subject to future licensing for wireless services” but also sought comment on “whether [it] should permit three-way agreements where the relocation channel is in the Channel 52-58 band, which will be subject to such future licensing.”⁵ Midwest does not object to voluntary three-way channel clearing arrangements *per se*. We strongly object, however, to *any* band-clearing mechanisms that would result in *any increased interference to the analog or digital operations of other full power television stations*.⁶ Without proper Commission safeguards, voluntary three-way agreements and other band-clearing mechanisms pose a real and dangerous threat to the public’s television service in the most spectrum-congested regions of the country.

² The Commission’s relocation proposals include Channel 59 because new 700 MHz licensees are required to protect broadcasters on that channel. *See id.* ¶ 60 n.118.

³ *Id.* ¶ 81.

⁴ *See id.* ¶¶ 87-92.

⁵ *Id.* ¶ 89.

⁶ Interference calculations for purposes of this “no-interference” standard should be based on the impacted station’s allotment parameters or on its authorized or applied-for facilities, whichever is greatest.

I. PAXSON'S PROPOSAL TO RELOCATE STATIONS IN THE LOS ANGELES DMA FROM CHANNELS 59-69 TO IN-CORE CHANNELS WOULD CAUSE UNACCEPTABLE INTERFERENCE TO EXISTING SERVICE.

In the *DTV Proceeding*,⁷ the Commission stressed that it had “attempted to minimize to the extent possible the number of out-of-core DTV allotments in developing the DTV Table.”⁸ Because the Commission was particularly concerned with the Channel 60-69 band, its “DTV Table of Allotments minimize[d] the use of channels 60-69 to facilitate [the] early recovery of this portion of the spectrum.”⁹ Thus, Channels 60-69 were allotted to broadcasters only in the most severely spectrum-congested regions of the country. As the Commission emphasized in the *DTV Proceeding*:

In the *Sixth Report and Order*, we allotted spectrum between channels 60 and 69 to the fewest number of broadcasters, in light of our then-pending proceeding examining whether that spectrum should be reallocated. As we noted in the *Channels 60-69 Reallocation Report and Order*, “the operation of some TV and DTV stations in this spectrum is clearly required to facilitate the DTV transition: and the Budget Act provides for this, stating ‘[a]ny person who holds a television broadcast license to operate between 746 and 806 megahertz may not operate at that frequency *after the date on which the digital television service transition period terminates* as determined by the Commission.’” Had other channels been available, they would have been allotted to these broadcasters.¹⁰

Midwest's station, KFMB-TV, is located in the Southern California region of the country – one of the three regions identified by the broadcast industry as an “Acute Problem

⁷ See *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, MM Docket No. 87-268 (the “*DTV Proceeding*”).

⁸ *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, 13 FCC Rcd 7418, 7440 (adopted February 17, 1998) (“*Sixth MO&O*”); see also *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Sixth Report and Order*, 12 FCC Rcd 14588, 14624 (adopted April 3, 1997) (“*Sixth R&O*”) (“[W]e have developed a Table of DTV Allotments that attempts to provide all eligible broadcasters with a DTV allotment within channels 2-51 without bias against the use of any channel in this band. Where necessary, however, channels outside this region are also used.”).

⁹ *Sixth R&O*, 12 FCC Rcd at 14626.

¹⁰ *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order*, 13 FCC Rcd 6860, 6891-92 (adopted February 17, 1998) (citations omitted) (emphasis in original).

Area” because of severe spectrum congestion.¹¹ Because of the spectrum shortage in this region, the Commission had no choice but to make five DTV allotments in Channels 60-69 in the Los Angeles DMA. These allotments were based on complex engineering analyses demonstrating that no other channels were available that would both provide sufficient replication for the stations receiving the Channel 60 to 69 allotments and adequately protect other stations in the market from excessive interference. Notwithstanding the Commission’s comprehensive technical analyses and the extreme spectrum constraints in the Southern California region – and particularly in the Los Angeles DMA – Paxson Communications Corporation (“Paxson”) has asked the Commission to examine “nine possible DTV assignments for use in that market outside of the 60-69 band.”¹²

In a May 26, 2000 *ex parte* letter, Paxson states that it “recognize[s] that additional interference studies will be necessary to determine which of these channels will be usable and with what potential levels of interference, but the fact that such channels exist warrants, in [its] opinion, serious review by the FCC of possible alternative DTV allotments in any market where Channels 59-69 have been allotted for DTV use.”¹³ However, Paxson describes no new information or changed circumstances to justify a re-examination of the Commission’s prior conclusions with regard to the Los Angeles DMA. Indeed, the engineering report accompanying Paxson’s *ex parte* letter indicates that “[a]lternative DTV channels were sought regardless of the amount of replication to the respective analog (NTSC) operations” – a

¹¹ See *Ex Parte Submission Based on New Technical Discoveries to Help the Commission Improve the DTV Table of Allotments/Assignments Submitted by the Association for Maximum Service Television, Inc. and Other Broadcasters*, MM Docket No. 87-268 (November 20, 1997), at 3 (identifying the Southern California coast as one of three Acute Problem Areas where spectrum congestion could deprive millions of people of existing and new television service); *Sixth MO&O*, 13 FCC Rcd at 7493 (noting that Southern California was “one of three regions identified in the Joint MSTV Petitioners’ petition as problem areas where existing NTSC service and future DTV service are most in jeopardy under the DTV Table”).

¹² See *Ex Parte Letter from Lowell W. Paxson, Chairman, Paxson Communications Corp., to Commissioner Susan Ness*, WT Docket No. 99-168 (received May 26, 2000) at 1 (“*Paxson Ex Parte*”).

¹³ See *id.* at 1.

critical factor considered by the Commission in assigning appropriate DTV channels to existing broadcasters.¹⁴

One of the channels identified by Paxson as a possible relocation channel in the Los Angeles DMA is Channel 8 – a channel the Commission specifically *removed* from the DTV Table of Allotments in Los Angeles because of interference problems with KFMB-TV’s analog Channel 8 operations in San Diego.¹⁵ Because Midwest plans to move KFMB-TV’s digital operations to Channel 8 after the transition, interference conflicts with a Channel 8 allotment in Los Angeles would extend beyond the DTV transition as well. In the initial DTV Table, Channel 8 had been allotted to Los Angeles and assigned to KABC-TV.¹⁶ Both KFMB-TV and KABC-TV sought reconsideration of this decision because it raised serious interference issues between the two stations.¹⁷ In its order amending the DTV Table to remove Channel 8 from Los Angeles, the Commission noted that KABC-TV had sought a new DTV channel because “its DTV channel 8 allotment will cause interference to the NTSC channel 8 service of KFMB-TV in San Diego, California, 172 km away” and because “KABC-TV’s DTV channel 8 would not achieve the predicted degree of replication because of interference from KFMB-TV.”¹⁸ The Commission amended the DTV Table on reconsideration to address these interference problems, stating: “[W]e have reviewed the DTV allotments in the Southern California area and made a number of changes to address various interference concerns. In this regard, we are changing KABC-TV’s DTV allotment from DTV channel 8 to DTV channel 53.”¹⁹ Thus, the Commission

¹⁴ See *id.* at Attachment, p. 1.

¹⁵ See *id.* at Attachment, p. 2-3; *Sixth MO&O*, 13 FCC Rcd at 7493.

¹⁶ See *Sixth R&O* (Appendix B), 12 FCC Rcd 14702.

¹⁷ See *Petition for Partial Reconsideration of Midwest Television, Inc.*, MM Docket No. 87-268 (June 13, 1997); *Petition for Reconsideration of the Sixth Report and Order (“Sixth R&O”) of ABC, Inc.*, MM Docket No. 87-268 (June 13, 1997).

¹⁸ See *Sixth MO&O*, 13 FCC Rcd at 7493. Notably, the assumed facilities used in Paxson’s engineering analysis are even more short-spaced to KFMB-TV than KABC-TV. See *Paxson Ex Parte* at Attachment, p. 2.

¹⁹ See *Sixth MO&O*, 13 FCC Rcd at 7493.

already has determined Channel 8 to be an unsuitable DTV channel for the Los Angeles DMA and the same circumstances that led to that determination remain true today.

Paxson's proposal asks for reconsideration of the delicate balance the Commission struck between preserving the public's existing analog television service and assuring a robust digital service, on the one hand, and minimizing to the extent feasible the use of channels that ultimately will be dedicated to other services, on the other. The Commission should reject Paxson's proposal, which would disrupt this careful balance and unduly sacrifice the public's analog and digital television service.

II. VOLUNTARY THREE-WAY AGREEMENTS POSE A SIGNIFICANT THREAT OF HARMFUL INTERFERENCE TO ALREADY DIMINISHED TELEVISION SERVICE.

The above example demonstrates specifically the inappropriateness of Paxson's proposal with regard to the possible use of Channel 8 and other lower band channels in Los Angeles. Generally, it illustrates that attempts to manipulate channel allotments during the DTV transition in severely congested regions, such as Southern California, are fraught with peril. As noted above, stations in these regions already have been subject to substantial interference trade-offs in order to accommodate the DTV transition. The Commission's *de minimis* interference allowance permits additional reductions in the public's analog and digital television service in these areas. If the Commission allows allotment modifications to accommodate band-clearing arrangements that further increase interference levels in these regions or put additional strains on *de minimis* allowances, the public will suffer – through increased interference levels and analog and digital service losses.

Significant service losses could result not only from *adding* new allotments to the lower television spectrum (as Paxson proposes), but also from arrangements that would *replace* existing incumbent operations with non-identical relocated station facilities. Although voluntary three-way agreements or other similar mechanisms may not increase the *number* of allotments within the lower television band, they certainly could increase the *level of interference* experienced by other full power television stations in the region. As the Commission

acknowledges in the *Further Notice*, “in the event that, in a three-way voluntary agreement, a Channel 59-69 incumbent employs a lower band incumbent’s exact facilities (*i.e.*, same location, same power, same antenna height), no interference issues would arise. However, if a Channel 59-69 incumbent seeks to operate either at a different location or with different technical parameters than a lower band incumbent, there could be a possibility for interference to other TV stations.”²⁰ To avoid interference problems, the Commission states that it “would therefore require all such requested station assignments to be in full compliance with prescribed interference criteria (*i.e.*, minimum required distance separations with respect to other TV stations), and would address each such proposed assignment on a case-by-case basis.”²¹ As explained below, the interference criteria used by the Commission to analyze such proposals should reflect a *no-interference* standard.

III. THE COMMISSION SHOULD PROHIBIT BAND-CLEARING ARRANGEMENTS THAT COULD CAUSE ANY NEW INTERFERENCE TO EXISTING ANALOG AND DIGITAL TELEVISION ALLOTMENTS.

The Commission faced a tremendous task in developing new DTV assignments for more than 1600 full power stations across the country – a task that was compounded in severely spectrum-congested regions such as Southern California. The magnitude of this task coupled with the limited spectrum available made it inevitable that there would be compromises and imperfect solutions. As the U.S. Court of Appeals for the D.C. Circuit emphasized in its decision last month upholding the Commission’s DTV rules and allotment policies, although the Commission faced a formidable challenge in crafting a workable DTV transition, it achieved a balance of trade-offs that was met with a high degree of consensus from those affected.²² As the D.C. Circuit pointed out: “To plan for the transition, the FCC indisputably faced myriad policy choices and a daunting engineering task. Given the complexity and interdependence of the

²⁰ See *Further Notice* at 37 n.168.

²¹ See *id.*

²² See *Community Television, Inc. v. FCC*, 2000 U.S. App. LEXIS 15689 (D.C. Cir. July 7, 2000).

decisions the FCC had to make, the trade-offs among competing interests would be unlikely to satisfy all broadcasters and consumers. Remarkably then, only a few broadcasters, four petitioners supported by three intervenors, challenge the final rules now.”²³ The Commission must not now disturb this broadly supported and recently upheld balance by sacrificing the public’s television service in order to achieve the early clearance of the upper UHF band.

Stations in Southern California and other severely congested regions already have suffered substantial service losses and limitations as a result of the DTV transition. When it made Channel 60-69 allotments in such regions, the Commission determined that the increased burdens and service losses that would result from additional in-core assignments would be too great. And by adopting its *de minimis* interference rules, the Commission opened the door for even greater interference losses in these areas, further departing from the age-old principle that the loss of even a few viewers is too much. In the spectrum-congested regions where the Commission was forced to make allotments in Channels 60-69, stations already are competing to use *de minimis* interference allowances and many stations will face up to a 10 percent reduction in their service populations as a result. These areas already suffer from spectrum shortages and excessive interference; there simply is no room and no justification for additional interference losses.

Accordingly, regardless of the band-clearing mechanism used, stations relocating to the lower television band during (or after) the transition should not be permitted to cause *any* new interference – including *de minimis* interference – to the analog or digital operations of other full power television stations. To the extent that a station’s relocation would result in any change in the analog or digital television allotments in the region – either through adding a new allotment or through utilizing different technical parameters than a vacating incumbent station – such relocation should be permitted only where the proposed new operations will result in no

²³ *Id.* at *4.

new interference to other stations' digital or analog operations. Any other approach would jeopardize the DTV transition and result in unjustified losses of television service to the public.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'J. Blake', written over a horizontal line.

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